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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

JACQUELINE LONDO,

Plaintiff and Respondent,

v.

DENNIS BURNS,

Defendant and Appellant.

E046515

(Super.Ct.No. RCV085778)

OPINION

APPEAL from the Superior Court of San Bernardino County. J. Michael Gunn and Harry E. Woolpert,¹ Judges. Affirmed.

Law Offices of Daniel W. Rinaldelli and Daniel W. Rinaldelli for Defendant and Appellant.

Tomlinson, Prince, Cullen & Leahy and James Allen for Plaintiff and Respondent.

1. Introduction

Defendant Dennis Burns and plaintiff Jacqueline Londo, his former girlfriend,

¹ Harry E. Woolpert is a retired judge of the San Luis Obispo Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

lived together for eight years in Burns's Chino residence. After they split up, Londo sued Burns for breach of contract, asserting they had an agreement she would pay one-half the mortgage in exchange for an interest in the property. In opposition, Burns claimed Londo was making rental payments and had no such interest. A jury awarded damages for breach of contract to Londo. Burns appeals.

Burns argues two principal issues on appeal. First, he contends there was no right to a jury trial in a case involving a non-marital relationship and rights to real property. Second, he maintains the standard of proof should have been clear and convincing evidence and not a preponderance of the evidence.

We reject these contentions and affirm the judgment.

2. Facts

We recite the facts, as developed at trial, in a style favorable to the judgment. (*Nestle v. City of Santa Monica* (1972) 6 Cal.3d 920, 925-926; *Virtanen v. O'Connell* (2006) 140 Cal.App.4th 688, 709.)

In her complaint for breach of implied contract and declaratory relief, Londo alleged that she and Burns had orally agreed each would pay one-half of Burns's mortgage.

Londo began dating Burns in 1995 and moved into his home in early 1996 when Burns was still married to his ex-wife, who still shared ownership of the house. In January 1996, Burns mentioned he needed a renter to meet expenses and Londo offered to move in and pay one-half the mortgage.

Londo was a legal secretary earning about \$65,000 a year. Burns earned about

\$30,000.

In November 1996, Londo filed for bankruptcy because of a \$10,000 debt she had incurred helping to pay household expenses. In Londo's bankruptcy filing, she did not claim an ownership interest in the Chino house.

The monthly mortgage payment was about \$1,400. During their cohabitation, Londo paid Burns about \$700 per month, which she identified on her checks as being for one-half of the mortgage. Sometimes Burns would scratch out that notation and write in "rent." He testified he considered Londo to be a renter but he admitted he did not declare her payments as income for tax purposes.

In August 1997, Burns acquired full title to the property as part of his divorce.

In October 1998, Burns agreed to share an interest in the house with Londo. Londo asked Burns to execute a grant deed on the property to both of them as joint tenants. She contended he signed and notarized the deed but it was not recorded. He denied he ever executed it. He kept the deed in his briefcase with other paperwork.

In 2000, Londo refused Burns's marriage proposal but they continued to live together. In 2002 and 2003, they remodeled and refurnished the house, sharing the costs. But, when Burns refinanced the house in September 2003, he did not add Londo to the title. The last time Londo saw the grant deed was before she moved out in October 2004.

A real estate appraiser testified that the property was worth \$435,000 in October 2004 and the equity in the property on that date was \$290,000. One-half that amount, \$145,000, plus interest of \$54,000, equaled \$199,000 at the time of trial in June 2008.

Londo testified that the payments she made to Burns for the mortgage totaled more than \$80,000. She repeatedly testified that, during their relationship, they shared expenses and taking care of the house and his two children. She admitted, however, that they did not hold themselves out as married.

The jury awarded Londo \$73,500 in damages.

3. Standard of Review

Burns incorrectly argues that this court applies an independent standard of review, citing cases involving illegal contracts. (*Timney v. Lin* (2003) 106 Cal.App.4th 1121, 1126; *Lindenstadt v. Staff Builders, Inc.* (1997) 55 Cal.App.4th 882, 892.) The present case does not involve an illegal contract but a disputed contract.

Our review is deferential: “Judgments and orders of the lower courts are presumed to be correct on appeal. [Citation.]’ (*In re Marriage of Cohn* (1998) 65 Cal.App.4th 923, 928.) ‘We imply all findings necessary to support the judgment, and our review is limited to whether there is substantial evidence in the record to support these implied findings. [Citations.]’ (*Ibid.*; see also *People v. Francis* (2002) 98 Cal.App.4th 873, 878.) Furthermore, ‘[w]e will uphold the decision of the trial court if it is correct on any ground. [Citation.]’ (*Schubert v. Reynolds* (2002) 95 Cal.App.4th 100, 110.)” (*Virtanen v. O’Connell, supra*, 140 Cal.App.4th at pp. 709-710.)

4. Right to Jury Trial

Burns’s objection to a jury trial was not raised below. Therefore, it is waived on appeal. (*Koehl v. Verio, Inc.* (2006) 142 Cal.App.4th 1313, 1339.)

Notwithstanding Burns's waiver, it is unquestionable that the right to a jury trial exists on a contract claim for damages. (*DeGuere v. Universal Studios, Inc.* (1997) 56 Cal.App.4th 482, 507, citing *Raedeke v. Gibraltar Sav. & Loan Assn.* (1974) 10 Cal.3d 665, 671 and *C & K Engineering Contractors v. Amber Steel Co.* (1978) 23 Cal.3d 1.) “[A]n action for damages is legal in nature.” (*Mendoza v. Ruesga* (2008) 169 Cal.App.4th 270, 284.)

The reliance by Burns on a case involving the equitable remedy of quiet title is not relevant. (*Murray v. Murray* (1994) 26 Cal.App.4th 1062, 1066-1068.) Londo did seek title to the Chino residence. Her suit was for damages to compensate her for eight years of payments on the mortgage.

5. Standard of Proof

Founded on his mischaracterization of the nature of Londo's claim, Burns essays a second argument concerning a higher burden of proof than preponderance of the evidence. Burns relies on cases in which a claimant seeks title to real property not damages. (*Byrne v. Laura* (1997) 52 Cal.App.4th 1054, 1067-1072; *Murray v. Murray*, *supra*, 26 Cal.App.4th at pp. 1066-1068; *Tannehill v. Finch* (1986) 188 Cal.App.3d 224; *Toney v. Nolder* (1985) 173 Cal.App.3d 791.)

The California Supreme Court has refuted a similar contention: “These cases, however, are inapposite because they involved attempts to rebut the legal and beneficial title to real property and were expressly decided under the authority of Evidence Code section 662. Evidence Code section 662 provides: ‘The owner of the legal title to property is presumed to be the owner of the full beneficial title. This presumption may

be rebutted only by clear and convincing proof.’” (*Weiner v. Fleischman* (1991) 54 Cal.3d 476, 486.)

Londo’s case proceeded to trial solely as an action for damages for breach of an oral agreement not as a claim related to title. Consequently, the trial did not involve an effort to rebut the legal or beneficial title to property: “[T]he decisional law does not justify or require a departure from the ordinary civil standard of ‘preponderance of the evidence’ when a party seeks to establish the existence and scope of an oral joint venture or partnership agreement.” (*Weiner v. Fleischman, supra*, 54 Cal.3d at p. 486; *In re Marriage of Ettefagh* (2007) 150 Cal.App.4th 1578, 1585.) The preponderance of the evidence was the proper standard of proof and the jury was correctly instructed on this issue.

6. Disposition

We affirm the judgment. Londo, the prevailing party, shall recover her costs on appeal.

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s/Gaut
J.

We concur:

s/Hollenhorst
Acting P. J.

s/Miller
J.